IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 10291 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NIRAV NAVINBHAI SHAH & 4 - Applicants
Versus
STATE OF GUJARAT & 1 - Respondents

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Appearance :

MR TS NANAVATI for Applicants:1-5.MR KJ SHETHNA for Applicants:1-5.
MR MA PATEL ADDL PUBLIC PROSECUTOR for Respondent : 1,
MR KS NANAVATI WITH SAURABH AMIN FOR NANAVATI ASSOCIATES for Respondent : 2,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 28/09/2006

ORAL JUDGMENT

1. Rule, Shri Patel, learned Addl.P.P. waives service of Rule on behalf of Respondent No.1 - State of Gujarat and Shri Saurabh Amin, learned Counsel

waives service of Rule on behalf of the Respondent No.2. On 21.09.2006 this matter was heard at length and it was kept for orders on 22.09.2006 as Counsels for both the sides wanted to cite authorities in support of their respective stand.

2. On the adjourned dates the matter did not reach and hence it was kept on 28.09.2006 i.e. today. With the consent of learned Counsels for the parties, the Rule is fixed forthwith.

3. The applicants, original accused in Crime I. C.R. No. 54 of 2004 dated 26.02.2004 registered with Sector –7 Police Station Gandhinagar for offences punishable under Sections 381, 408, 415, 418, 420 read with Sections 34 and 120-B of the Indian Penal Code and Section 66 and 72 of the Information and Technology Act 2000 (herein after referred to as “the I.T. Act” for short) have preferred this application under Section 482 of the Code of Criminal Procedure 1973 (herein after referred to as “the Code” for short) for quashing of FIR I CR. No. 54 of 2004 dated 26.02.2004 registered with Sector No.7 Police Station Gandhinagar and the resultant Criminal Case No.3528 of 2004 pending before the Judicial Magistrate First Class Gandhinagar, mainly on the grounds that the facts and allegation leading to lodging FIR show that the real dispute was a civil dispute and as the same has been amicably settled between the parties, no useful purpose would be served in continuing the criminal proceedings, rather continuation of same would be counter productive to the interest of justice.

4. The facts leading to filing of this petition

deserve to be set out in brief.

5. The Respondent No.2, original complainant, who is Director of I-Serve System Pvt. Ltd (herein after referred to as 'the complainant') filed a written complaint to the Police Inspector, Gandhinagar Police Station on 26.02.2004 against the present applicants (herein after referred to as 'original accused') alleging commission of offence punishable under Sections 381, 408, 415, 418, 420 read with sections 34 and 120-B of the IPC and also under sections 66 and 72 of the I.T. Act. The gist of the complaint was that the accused no.1 hacked with the help of the other accused the complainant’s computers and stole important data. The offence was investigated and report came to be filed by police and Criminal Case No. 3528 of 2004 began. The complainant and three other witnesses have already been examined. It is stated in this application that in the meanwhile some settlement was arrived at between the parties to end all civil as well as criminal litigations pending between them in various courts including court in United Kingdom. It is stated that pursuant to the said settlement a joint application dated 10.08.2005 came to be filed in the Criminal Case No. 3528 of 2004 before the Court of JMFC Gandhinagar at Exhibit 58 copy whereof is produced at page 54 on the record of this petition praying for granting permission under section 320 for compounding the offences. The same is pending. As the offence under section 468 is non-compoundable, this petition was required to be filed.

6. During the course of submissions, an affidavit of

Respondent No.2, Shri Sunil V. Pindoria - original complainant and the Director of the I-Serve Systems Pvt. Ltd. dated 28.09.2006 has been tendered by his counsel stating that settlement has been arrived at between the parties and he and his Company were interested in quashing the criminal proceedings as it would serve the ends of justice. The same is ordered to be taken on record.

7. Learned Counsel Shri Sethna for the petitioners and Shri K.S.Nanavati for Shri Amin, learned Counsel for the Respondent No.2 have submitted that in view of the aforesaid facts and circumstances, the continuation of criminal proceedings would not serve any useful purpose and rather it would result into unnecessary consternation to the parties having adverse effect upon their entire settlement where under all the civil and criminal cases are agreed to be concluded and ended amicably. Learned Counsels for the accused and the Complainant have relied upon the decision of the Apex Court in case of ***B.S.Joshi Vs. State of Haryana*** reported in ***AIR 2003 SUPREME COURT at page 1386*** and submitted that quashing of the proceedings impugned in the present petition is in the interest of justice. They have also relied upon the decision of the Apex Court in case of ***Mahdhave Rao Schindiya & another etc. Vs. Sambhajirao Chandrojirao Angre & others etc.*** reported in ***AIR 1988 Supreme Court 709*** in support of their submission that when the real dispute is in nature of civil then the criminal proceedings must be quashed as it is in the interest of justice. The Counsels of the private parties have also relied upon the decisions of this Court in case of ***Rajeshbhai Natvarlal Agrawal and 2 Vs.***

State of Gujarat and 1 reported in ***2005(3) Gujarat Law Reporter at page 504*** and submitted that this Court in case of Rajeheshbhai has quashed the criminal proceedings in respect of the offences punishable under sections 406, 420, 467, 468, 471 read with section 114 when settlement was reported between the parties.

8. Shri Shethna, learned Counsel for the petitioners makes a statement under the instructions of the applicant No. 1, 2 and 3, who are present in the Court and who are entitled to instruct the Counsel on behalf of all the accused that none of the accused will claim any compensation in respect of this criminal proceedings from any party to the criminal proceedings.

9. Shri M.A. Patel, Learned A.P.P. has submitted that this being not a fit case, the criminal proceedings may not be quashed. However Shri Patel for the State could not dispute the proposition of law in the aforesaid decisions cited for quashing the criminal proceedings in peculiar facts and circumstances of this case. Shri Patel urged that as the facts are different in the present case no interference was called for. Shri Patel's submission could be set out as under.

   (1) That in the present case, the trial has begun and the deposition of the complainant and three others witnesses have already been recorded and when the offence is not compoundable the same may not be quashed under Section 482 of the Code.

   (2) The case of the prosecution is not dependent upon only oral testimony of the witnesses. The documentary evidence was sufficient

enough to bring home the guilt on the part of the accused.

(3) The offence need not be viewed only as Civil dispute between the parties. The offence of hacking being capable of perpetrated against the society as such and hence only on account of settlement between the parties it cannot be quashed.

(4) In view of Section 66 of the IT Act, it cannot be said to be an offence between two private parties only.

(5) Looking to the facts, it cannot be said that there is no chance of conviction of the accused in the trial.

10. This Court is unable to accept the submissions of Shri Patel, learned A.P.P for the State for the following reasons.

(A) The Section 482 of the Code provides for passing appropriate orders in exercise of inherent powers of the High Court in the interest of justice. Any fetters of Section 320 of the Code do not circumscribe the inherent powers of the High Court to pass order in the interest of justice or to prevent abuse of the process of the Court or to secure the ends of justice at any stage.

(B) The Apex Court has in case of ***Union Carbide Vs. Union of India*** reported in ***(1991) 4 SUPREME COURT CASES 584***

observed that the proposition that the State is the *dominus litis* in criminal cases is not an absolute one. The Society for its orderly and peaceful development is interested in the punishment of the offender and if the offence for which a prosecution is being launched is an offense against the society and not merely an individual wrong any member of the society has locus to initiate a prosecution as also to resist withdrawal of such prosecution. Thus in some cases the offence committed affects the entire society as such whereas in other cases the offence committed may affect only an individual or it may have effect upon the parties concerned. In the offence of later kind the affected parties have rights to settle their disputes, which may also be amounting to offences, but only on that count the genuine settlement of disputes cannot be thwarted especially if it is ending in amicable resolution of all the litigation between the parties. Thus the vital difference between the offences affecting entire society at large and offences essentially affecting private parties only, deserve to be borne in mind while examining any plea for quashing the criminal proceedings on account of any settlement between the accused and the

complainant. The offences that are non-compoundable can broadly be said to be offences affecting the society at large. The Trial Court may therefore rightly not permit any compounding of such offences. But can Section 320 of the Code therefore be treated as bar in quashing such non-compoundable offences. The Apex Court has observed in case of B.S.Joshi (supra) as under:

"para 8 : It is, thus, clear that Madhu Limaye's case does not lay down any general proposition limiting power of quashing the criminal proceedings of FIR or complaint as vested in Section 482 of the Code or extraordinary power under Article 226 of the Constitution of India. We are, therefore, of the view that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary. Section 320 would not be a bar to the exercise of power of quashing. It is, however, a different matter depending upon the facts and circumstances of each case whether to exercise or not such a power.

Para 9 : The High Court has also relied upon the decision in case of Surendra Nath Mohanth's case (supra) for the proposition that offence declared to be non-compoundable cannot

be compounded at all even with the permission of the Court. That is of course so. The offences which can be compounded are mentioned in Section 320. Those offences which are not mentioned therein cannot be permitted to be compounded. In Mohanty's case, the appellants were convicted by the trial Court for offence under Section 307. The High Court altered the conviction of the appellants and convicted them for offence under Section 326 and imposed sentence of six months. The trial Court had sentenced the appellants for a period of five years RI. The application for compounding was, however, dismissed by the High Court. This Court holding that the offence for which the appellants had been convicted was non-compoundable and, therefore, it could not be permitted to be compounded but considering that the parties had called their dispute outside the Court, the sentence was reduced to the period already undergone. It is, however, to be borne in mind that in the present case the appellants had not sought compounding of the offences. They had approached the Court seeking quashing of FIR under the circumstances abovestated.

Para 10 : In State of Karnataka V. L.

Munishwamy and other (1977) 2 SCC 699), considering the scope of inherent power of quashing under Section 482, this Court held that in the exercise of this wholesome power, the High Court is entitled to quash proceedings if it comes to the conclusion that ends of justice so require. It was observed that in a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice and that the ends of justice are higher than the ends of mere law though justice had got to be administered according to laws made by the legislature. This Court said that the compelling necessity for making these observation is that without a proper realization of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects. It would be impossible to appreciate the width and contours of that salient jurisdiction. On facts, it was also noticed that there was no reasonable likelihood of the accused being convicted of the offences. What would happen to the trial of the case where the wife does

not support the imputations made in the FIR of the type in question. As earlier noticed, now she has filed an affidavit that the FIR was registered at her instance due to temperamental differences and implied imputations. There may be many reasons for not supporting the imputations. It may be either for the reason that she has resolved disputes with her husband and his other family members and as a result thereof she has again started living with her husband with whom she earlier had differences or she has willingly parted company and is living happily on her own or has married someone else on earlier marriage having been dissolved by divorce on consent of parties or fails to support the prosecution on some other similar grounds in such eventuality, there would almost be no chance of conviction. Would it then be proper to decline to exercise power of quashing on the ground that it would be permitting the parties to compound non-compoundable offences. Answer clearly has to be in 'negative'. It would, however, be a different matter if the High Court on facts declines the prayer for quashing for any valid reasons including lack of bonafides.

(C) The complaint also does not contain any

essential ingredient for maintaining criminal proceedings for the alleged offences. As its stated herein above the parties have filed civil suits also in respect of the same dispute. The entire dispute between the parties is resolved by amicable settlement. The alleged hacking is perpetrated on the Complainant’s Computer System only which said to have data pertaining to its client. The Counsels have submitted that on some of the web sites these data are already available. The dispute appears to be private in nature. The offence alleged is not strictly affecting or infringing any other individual or citizen. Thus looking to the nature of the disputes, it can well be said that continuation of the same is not in interest of justice.

(D) The decision of this in case of Rajeshbhai (supra) is also applicable in the facts and circumstances of this case. Shri Patel could not point out any distinguishing features. In that case also this court on account of settlement between the parties quashed the offences punishable under section 406, 420, 467, 468, 471 read with 114.

(E) Shri Patel learned APP could not point out any document from the papers sufficient enough to maintain his stand that the case is not entirely dependent upon the oral testimony and the

documentary evidence could establish the guilt of accused.

(F) The continuation of Criminal Proceedings would result into rather miscarriage of justice and hence its deserve to be quashed.

11. In view of this discussion this Court is of considered view that the FIR 54 of 2004 registered at Sector 7 Police Station Gandhinagar and resultant Criminal Case No. 3528 of 2004 pending before the JMFC Gandhinagar deserve to be quashed in the interest of just and hereby they are quashed.

12. Rule is made absolute.

(S.R.BRAHMBHATT, J.)

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